IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5982 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SABURBHAI HEMABHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MS. HARSHA DEVANI, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

MR NV SOLANKI for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/11/1999

C.A.V. JUDGEMENT

#. The petitioner in this writ petition has challenged the order dated 15.4.1995 annexure-B passed by the Deputy Collector, order annexure-C dated 31.7.1996 passed in revision by the Collector and order annexure-E dated 17.3.1997 passed by the Secretary (Appeal), Revenue Department, Gujarat State on the ground that these orders are illegal and arbitrary. In the writ petition five

questions had been posed for consideration by this court.

#. The brief facts giving rise to this petition are as under:-

#. Out of 5 acres 34 gunthas land of block No. 7 of village Tajpura, Dist. Kaira, the petitioner had purchased 1 acre 18 gunthas through a registered sale deed from its owners for Rs. 4200/- on 9-10/5/1974. The petitioner claims to be an Adivasi so also the owners of the land are said to be Adivasis. After purchasing the land the petitioner cultivated the same without any intervention and spent considerable amount in getting the land improved. After a period of 15 years of peaceful cultivation, the petitioner received show cause notice from the Deputy Collector calling upon him to show cause why the land in question should not be forfeited to the Government. Suitable reply to the show cause notice was given by the petitioner. Entry was made in favour of the petitioner which was certified, still, the petitioner was ready to pay 60 times the assessment for regularisation of the transaction. The transaction was between agriculturist and agriculturist. The mutation entry of the land as new tenure, according to the petitioner, is arbitrary. No enquiry was held for deciding whether the land was new tenure or old tenure. The Deputy Collector however ordered that the land in question be forfeited for breach of conditions. Therefore, against the order annexure-B the petitioner filed revision before the Collector, Godhra who also dismissed the petitioner's revision through order Annexure-C. The petitioner thereafter filed a revision before the Secretary (Appeal) who also dismissed the revision of the petitioner through annexure-E on 17.4.1997. Accordingly, this petition was filed. It is also mentioned that in view of the recent Circular issued by the Government the transaction should have been regularised by accepting 60 times the assessment from the petitioner. A copy of the Resolution has been annexed vide annexure-F.

#. The petition was admitted. Still no counter affidavit has been filed by the respondents. The learned counsel for the petitioner Shri A.J. Patel, learned A.G.P. Ms. Harsha Devani for the State and Shri Solanki for the previous owners were heard at length. The first contention of Shri A.J. Patel was that the petitioner is illiterate Adivasi, hence he could not find the distinction between new tenure and old tenure and since he is cultivating the land since May 1974, his possession may not be disturbed and the order forfeiting the land in

favour of the Government may be quashed. Annexure-A is sale deed which negatives the contention that the petitioner is an adivasi. The sale deed on the other hand shows that the vendor as well as vendee petitioner are Hindu Rajput by religion. Consequently, the petitioner cannot be said to be adivasi. Ignorance of law is no excuse. Hence this plea is no ground for quashing the impugned orders.

#. The next contention of Shri A.J Pwa wassatel that under the new circular and Resolution of the Government vide annexure-F breach if any can be regularised and the order for forfeiture can be quashed. Shri Patel vehemently argued that the Resolution annexure-F dated 11.3.1996 has to be read in letter as well as in spirit and if spirit of the Resolution is taken into consideration there can be no difficulty in regularising breach by directing the petitioner to pay 60 times of the land revenue as mentioned in condition No. 1 of this Resolution. However, the preamble of the Resolution itself indicates that it applies only in respect of lands granted for agricultural purposes under the Resolution of the Revenue Department of the Government in respect of new and impartible tenure land including the land granted mainly under the Rules of lease of the Government fallow lands, lands regranted under the Abolition Laws of different tenures etc. It is therefore clear that this Resolution applies only to the grant of lands made by the Government and not to lands purchased by the petitioner in breach of the mandatory requirement of law. The authorities below therefore committed no error in not giving the benefit of this Resolution. In Annexure-E it has been clearly stated and observed that in the Resolution of the Government dated 11.3.1996 there is no provision to regularise those sale transactions in case of such breach of conditions, in cases of transactions of sale which have taken place without prior permission and the sales in respect of the land possession whereof has at present continued with the purchaser. Thus the view of the Secretary (Appeal) does not appear to be contrary either to the letter or to the spirit of the Resolution annexure-F. The learned A.G.P. contended that 60 times assessment would be no amount on which such illegal transaction can be regularised. As such the sale transaction cannot be regularised in view of the Resolution annexure-F.

6. Another contention of Shri A.J. Patel has been that in the absence of enquiry under Section 84C of the Bombay Tenancy and Agricultural Lands Act it could not be held that the land in question was new tenure. However,

it was not a case under the Bombay Tenancy and Agricultural Lands Act, 1948, rather show cause notice was issued for breach of condition for sale of new tenure land, hence no enquiry under Section 84C of the Bombay Tenancy and Agricultural Lands Act was required.

7. The next contention has been that action was taken nearly after 15 years hence such belated action directing forfeiture of the land of the Government is illegal and contrary to the settled principles of law and judgement rendered in this behalf. It was admitted that no limitation is provided for taking action of such nature. Several cases were cited by the learned counsel for the petitioner on the point of suo motu exercise of revisional powers. In Bijolbhai Kadwabhai Bharwad & Anr. Vs. State of Gujarat & Anr. 1997 (4) GCD 234 (Guj) action for cancellation of entry under Section 108 of the Land Revenue Code was challenged. It was a case where action was taken after 11 years in one case and after two years in another case after certification of entry. It was held that such belated action was not within reasonable time, hence action was quashed.

8. In another case Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim (1997) 6 SCC 71 the apex court while considering the scope of Section 84C of the Bombay Tenancy Act held that suo motu enquiry by Mamlatdar should be initiated within a reasonable time. In this case the sale of land took place in December, 1972 whereas suo motu enquiry was started in December 1973. It was held by the apex court that suo motu power under Section 84C was not exercised within a reasonable time. It was also observed that where no time limit is prescribed for exercise of power under the statute it should be exercised within a reasonable time.

9. This court in Bhanabhai Morarbhai Solanki Vs. State of Gujarat 1994(1) G.L.R. 822 also took the same view in respect of suo motu revisional powers under Section 84C of the Bombay Tenancy and Agricultural Lands Act. It was held that suo motu powers have to be exercised within a reasonable time and if such proceedings are initiated after five years it cannot be said that it was initiated within reasonable time.

10. The three authorities below have concurrently held that the sale deed in favour of the petitioner was executed without obtaining permission of the competent authority. It was also held that without prior permission the vendors could not have sold the property

to the petitioner. Even subsequently permission of the competent authority was not obtained by the vendors. If it was so, then the sale deed becomes void abinitio meaning thereby that no sale deed existed in the eyes of law when it was executed. If the transaction was void abinitio it could be avoided at any time when it came to the notice of the authorities that void sale deed was executed and in such a case bar of limitation would not apply nor it can be said that because action was not taken within a reasonable time void transaction can be regularised.

11. In J.K. Patel Vs. District Collector, Mehsana 37(2) GLR 688 proceeding to declare sale void was initiated 20 years after the sale transaction. It was held that the transaction being void it could be declared so at any time and mere lapse of time would not make the action of the authorities invalid. It was observed that it is a settled proposition of law that any action, transaction, decision or order which is illegal and void ab initio is to be treated as non-est. The validity of such an illegal non-est order could be questioned in any proceedings at any stage by anybody. The very nature of non-est order in its effect does not create any right, title or interest. It being void, it confers neither any status nor any right. With the result, such non-est or illegal order, decision, transaction or action would be for all purposes ineffective and of no consequence in the eyes of law. The ratio of this case can be applied to the present petition also. It is immaterial that this ratio was given in a case under Bombay Prevention of Fragmentation and Consolidation Holdings Act. The same view was taken in Koli Nagjibhai Varjan Vs. State of Gujarat & Ors. 33(1) GLR 14. It was held in this case that normally the power of revision should be exercised within a reasonable time where by law no period is prescribed. However, where the transaction is non-est, the court cannot validate that transaction by invoking this principle.

12. Thus in the instant case since the sale deed annexure-A is void abinitio the said sale deed cannot be legalised simply because delayed action was taken. On the facts of the present case it cannot be said that the authorities were aware of illegal transaction; rather it was a case where sale transaction was concealed and fraud was played upon the authorities. It was only when the record of rights team had gone to the village for inspection that the owners made representation on 12.4.1990 before the Deputy Mamlatdar, Record of Rights and then the sale deed in favour of the petitioner came

to light.

13. Breach of condition case No. 22 of 91 on such report was initiated in the year 1991. It is therefore difficult to accept the contention that it was a case of delayed action. The disputed land originally was entered in the name of Bai Mani widow of Bhima Rama. The consolidation operations came in the year 1957 and regarding new block No. 7 entry was made that it was a new tenure. Bai Mani expired in the year 1972-73. Thereafter, the names of her nephews Chhatrasinh Hamirsinh and Kohyabhai Hamirsinh were entered as co-parceners. Once the entry was made in the life time of Bai Mani that the land was new tenure the entry in the names of the vendors of the petitioner could not be made as co-parceners because they could not be co-parceners of deceased Bai Mani. This transaction was also rightly considered to be illegal by the authorities. Thereafter, when the sale deed was executed in the year 1974 by the vendors in favour of the petitioner again the petitioner's name was entered as co-parcener. The purchaser in no case can be treated as co-parcener hence this entry was made deceitfully. If the sale deed would have been disclosed then the position would have been different. It is therefore a case where a fraud was definitely played upon the authorities and the authorities were not aware of the said sale transaction before the Record of Right team had gone to the village for making inspection. For the first time on 12.4.1990 representation was made by the previous owners regarding sale deed and then breach of conditions case 42 of 1991 came into existence. As such if the entry was certified in the year 1980 or 1982 under fraud or misrepresentation it cannot be said that it was a delayed action which was taken in 1991. Thus, this ground also cannot be pressed into service for holding the three impugned orders to be illegal and invalid.

14. Regarding controversy about the nature of land namely new or old tenure Shri A.J. Patel referred to the case of Chhotabhai Dahyabhai Thakore Vs. State of Gujarat 38(3) GLR 2016. It was observed in this case that mere mention of the words "New Tenure" in the revenue records is not sufficient proof of inalienablility and impartibility and there must be additional and reliable proof of this fact. In the case before me the facts are altogether different. The entry of new tenure continued right from 1957 when consolidation operation came into existence. At that time no objection was taken either by Bai Mani or her nephews. Even when the show cause notice for breach of

condition was given none appeared from the side of the vendors. It is so mentioned in annexure-B. If this was so then except the entries in the revenue record no other reliable evidence could be adduced on behalf of the respondent No. 1 before the authorities that the entry in the nature of new tenure was correct and justifiable. As such on this ground also the impugned orders cannot be invalidated.

15. The last ground has been that the forfeiture of land in favour of the Government is neither legal nor valid. In my opinion, this contention has also no force. Prima facie breach of condition for sale transaction of new tenure which is inalienable and impartible is established. A new tenure land cannot be transferred without prior permission of the competent authority. It is admitted in this case that no prior permission was obtained by the vendors from the competent authority to sell the land to the petitioner. As such breach of conditions of new tenure was obviously committed. If this was so, then the order for forfeiture cannot be said to be invalid.

16. Shri Solanki on the other hand contended that there was also violation of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and as such action should have been taken under this Act also and if this would have been done the consequence of forfeiture would have been that the land should have been given to the vendors. This contention cannot be accepted. The vendors who did not obtain prior permission of the competent authority for executing the sale deed not only practiced fraud on the statute but also earned profits from sale proceeds received from the petitioner and as such now the equity does not demand that the forfeited land should be ordered to be delivered in possession of the then owners namely the vendors. Moreover, since action was not taken under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act no such direction can be given in this writ petition on the request of the vendors respondents.

17. In the end Shri A.J. Patel contended that the petitioner is ready to pay any premium which is fixed by the authorities and since the petitioner has been cultivating the land for the last 25 years he may not be dispossessed. In order to appreciate this contention, which is based on humanitarian consideration, it is to be seen whether such directions can be given once the three orders of the authorities below are upheld. Normally

once it has been held that the Resolution annexure-F does not apply to the facts and circumstances of the present case no such direction can be given to the authorities to accept 60 times the land revenue and regularise the transaction. However, if the order of the Secretary (Appeal) Annexure E is examined it is found that he made the following relevant observations in para 10 of his order:-

> "In the resolution of the Government dated 11.3.1996 there is no provision to regularise those sale transactions in cases of such breach of conditions, in cases of transactions of sale which have taken place without prior permission and the sales in respect of the land possession where of has at present continued with the purchaser. Much time has expired after the sale. The land is being used for non-agricultural purpose. Under these circumstances, in such cases, the Collector can take appropriate decision having regard to the Resolutions in force and by taking into consideration the question as to whether the sale can be regularised by taking amount of premium as per Rules and if found necessary by seeking guidance from the Government. He is required to consider this aspect separately."

18. From the above observations of the last revisional authority it is clear that direction has been given to the Collector to take appropriate decision regarding the Resolutions in force which means resolutions other than annexure-F and by taking into consideration the question as to whether the sale can be regularised by taking amount of premium as per Rules and if found necessary by seeking guidelines from the Government he is required to consider this aspect separately. It therefore follows that if the judgement of the last revisional authority is confirmed then the Collector is still required to consider the direction of the revisional authority in para 10. As such there will be no harm in issuing directions in the lines given by the revisional authority in para 10 of his order annexure-E.

19. This court in Chhotabhai Dahyabhai Thakore Vs. State of Gujarat (supra) while quashing the orders of the authorities below directed in para 6 of the judgement that the Collector, Kheda, is directed to determine the amount of premium which is payable by the petitioner due

to the transfer of the land in his favour within a period of three months from the date of receipt of certified copy of this judgement and order and the petitioner shall be under obligation to pay the amount so determined immediately on receipt of demand from the Collector. Here also the facts were almost identical.

20. Consequently the prayer of the petitioner for quashing the impugned orders annexure B, C and E has to be refused. The writ petition in the circumstances of the case is bound to fail. However, in view of the judgement of the Secretary (Appeal) and the view taken by this court in Chhotabhai Dahyabhai Thakore Vs. State of Gujarat (supra) the Collector, Godhra, is directed to take appropriate separate action considering various resolutions of the Government whether the amount of premium can be accepted from the petitioner for regularising the said sale transaction. The Collector can also seek guidelines from the Government in this behalf and in case he comes to the conclusion that such transaction can be regularised in view of the fact that the petitioner has been using the land only for agricultural purposes he will fix the amount of premium within a period of three months from the date of production of certified copy of this order by the petitioner before him. The petitioner shall within a period of 15 days from the date of the order of the Collector, in case it favours him; shall deposit the premium. Until this exercise is over the petitioner should not be dispossessed from the land in question.

With the above observations, the writ petition is dismissed with no order as to costs.

00000

[pkn]